IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9022 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWANDAS V MISTRY & 1 - Petitioner(s)

Versus

SWASTIK MACHINERY & MILL STOREPVT LTD - Respondent(s)

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Appearance :

MR NR SHAHANI for Petitioner No(s).: 1,2.

..... for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 18/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 28.02.1992 passed by the Labour Court, Ahmedabad, in

Reference (LCA) No.431 of 1990, whereby the said reference was allowed.

2.0 The brief facts of the case are that the petitioners herein were employed by the respondent Mill in the capacity of Turner and Fitter respectively. On 05.08.1980 their services came to be terminated.

2.1 It is the case of the petitioners that the respondents had not permitted them to resume their duties pursuant to the communication received from the respondent Mill.

2.2 Feeling aggrieved by the said action of the respondent Mill, the petitioners raised a dispute before the Labour Court by way of a reference. The Labour Court, after hearing the parties, passed the impugned award. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. It is stated by the learned counsel that the petitioners have been reinstated in service on 09.09.1994. While admitting the matter on 24.10.1994, this Court had stayed the

implementation of the impugned order qua grant of back wages. Therefore, the question which is now required to be considered by this Court is with regard to back wages.

3.1 It is required to be noted that the respondent had addressed letter dated 29.12.1982 to the petitioners informing them to resume their duties. However, the petitioner did not resume their duties. Hence, it is clear that the petitioners had not joined the duties at their own wish, and therefore, the petitioners cannot be said to be entitled for back wages.

3.2 In my opinion, the Labour Court was completely justified in denying back wages to the petitioners. However, since the impugned award was issued on 28.02.1992 and the petitioners were reinstated only on 09.09.1994, they are entitled for all benefits for the said period.

4.0 In above view of the matter, the petition is partly allowed. The award dated 28.02.1992 passed by the Labour Court, Ahmedabad, in Reference (LCA) No.431 of 1990 is confirmed. However, the respondent Mill is directed to pay the petitioners all benefits from the date of

publication of the award till their reinstatement in service, within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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